

## Chapter 61: Hazardous Materials Storage

[Adopted 6-28-82 AdjATM Art. 16, as amended. Replaced 5-13-97 AdjATM Art. 33.  
Amendments noted where applicable.]

### § 61.1. Authority. [Amended 11-12-2002 STM Art. 16]

This bylaw is adopted by the Town of Westford under its home rule powers; its police powers to protect the public health, safety, and welfare; and its authorization under Massachusetts General Laws chapter 40, section 21(1).

### § 61.2. Purpose.

The purpose of this bylaw is to protect, preserve, and maintain the existing and potential groundwater supply, groundwater recharge areas, and surface water within the Town of Westford from contamination, and to protect public health and safety. Nothing in this bylaw shall be construed as inconsistent with, or in interference with, the authority vested upon the Fire Chief under Massachusetts General Laws chapter 148, or any state rules and regulations adopted pursuant thereto.

### § 61.3. Definitions. [Amended 11-12-2002 STM Art. 16]

The following definitions shall apply in the interpretation and implementation of this bylaw:

**Abandoned** means being out of service for a period in excess of 180 days, in the case of a tank or storage facility for which a license is required under the provisions of Massachusetts General Laws chapter 148, or for a period of 12 months, in the case of any other tank or storage facility.

**Above-ground tank or storage facility** shall mean any tank or storage facility, whether inside or outside a building, which is not underground.

**Discharge** means the disposal, injection, dumping, spilling, leaking, incineration, or placing of any hazardous material or any constituent thereof into or on any land or water so that such material may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

**Hazardous materials** means any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under Massachusetts General Laws chapters 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners.

**Hazardous wastes** shall mean any waste as set forth in Massachusetts General Laws chapter 21C.

**Leak** shall mean any uncontrolled movement of any hazardous material out of a tank or storage facility or its components, or any uncontrolled movement of water into a tank or storage facility or its components, measured as set forth in 527 CMR 9.02.

**Out of service** shall mean not in use, with no regular filling or drawing; or not being maintained, without adherence to the requirements of this bylaw; or uncontrolled, without being attended or secured; or any combination thereof.

**Priority pollutant** shall mean a hazardous material listed in 40 CFR Pt. 423, App. A, a copy of which is available from the Board of Health.

**Tank or storage facility** shall mean any structure used, or designed to be used, for the storage of hazardous materials of any kind. The term shall include 55 gallon drums or containers of hazardous materials. Tank or storage facility shall not include the storage of the following:

- A. fuel oil for heating purposes in a freestanding container of 330 gallons or less within a building, regardless of the number of such-sized tanks;
- B. liquefied petroleum gas containers of 1,000 gallons or less;
- C. pesticides, fertilizers, and hazardous materials in the original package in quantities normally associated with household use, including retail displays at retail establishments, and;
- D. working or single-use containers storing volumes not exceeding 5 gallons of hazardous materials intended for use within 24 hours.

**Town** shall mean the Town of Westford.

**Underground tank or storage facility** shall mean any tank or storage facility including piping in connection therewith, which meets at least one of the following criteria:

- A. The top of which is located below ground.
- B. Any portion of which is 4 feet or more below ground or as defined by Massachusetts General Laws chapter 148 or 527 CMR 9.00.

**§ 61.4. Registration.** [Amended 11-12-2002 STM Art. 16]

- A. All tanks, storage facilities, or retail establishments for the storage of hazardous materials with a capacity to hold more than 50 gallons liquid volume, 25 pounds dry weight, or 2 pounds of priority pollutants shall be registered with the Board of Health and the Fire Department, if applicable. Such registration shall contain the following information:
  - 1. Name, address, and telephone numbers (day and night) of the owner or operator.
  - 2. Capacity and contents of the tank or storage facility, with specific description of the type of hazardous material being stored.
  - 3. The date of installation of the tank or storage facility, if available.
  - 4. The type of tank or storage facility construction, and indication of any leak detection methods in place.
  - 5. The depth below ground level of the lowest and highest points of the tank or storage facility, if the tank or storage facility is underground.
  - 6. Description of any previous leaks, including approximate dates, causes, estimated amounts, and repairs taken.
  - 7. If the tank or storage facility is underground, additional material as required by section 61.6, herein.
- B. Owners or operators of tanks or storage facilities which meet the registration requirements of section 61.4.A shall register such tank or storage facility initially within 90 days of the enactment of this bylaw, and annually thereafter within 30 days of January 1, provided, however, that such owners or operators with currently registered tanks or storage facilities under the provisions of this Chapter 61 in effect prior to the adoption of this bylaw shall register such tanks or storage facilities first within 30 days of January 1, 1998. Owners or operators of tanks or storage facilities which later meet the registration requirements shall register such tanks or storage facilities initially within 30 days of meeting such requirements, and thereafter annually within 30 days of January 1.
- C. In addition to registration, owners or operators of tanks or storage facilities registered in accordance with sections 61.4.A and 61.4.B shall maintain on the premises an inventory, reconciled on a monthly basis, of purchase, sale, use, disposal, or discharge of hazardous materials. The purpose of the inventory is to detect any product loss and to provide ongoing record of all hazardous materials within the Town over the registration period. If unaccounted for product loss is discovered in the monthly reconciliation, the owner or operator shall comply with the provisions of section 61.7 herein.

Accurate daily inventory records required pursuant to Massachusetts General Laws chapter 148 or any state regulation shall suffice for the purpose of this section, and may be submitted, under section 61.4.D below, in accordance with this bylaw.

- D. Upon the request of the Board of Health, owners or operators subject to this chapter shall produce, within 24 hours, their latest reconciled inventory.

**§ 61.5. Above-ground tanks or storage facilities.** [Amended 11-12-2002 STM Art. 16]

- A. Surfaces underlying above-ground tanks or storage facilities containing hazardous materials, or areas in which hazardous materials are used, transferred, or delivered to such tanks or storage facilities, shall be impermeable to the materials being stored, and shall be enclosed by a permanent dike of impermeable construction. The dike system shall be sufficient to contain the capacity of the largest tank or storage facility plus 10% of the aggregate capacity of all other tanks or storage facilities within the enclosure. Double-walled tanks with continual interstitial monitoring may meet the diking requirements of this regulation. Nothing in this section shall be construed to replace the application of the dike requirements to tanks or storage facilities licensed under Massachusetts General Laws chapter 148.
- B. Wastes containing hazardous materials shall be held on the premises in product-tight containers for removal by a licensed carrier for disposal in accordance with Massachusetts General Laws chapter 21C.
- C. Above-ground tanks or storage facilities shall be prominently labeled to provide notice as to the types of hazardous materials stored within.

**§ 61.6. Underground tanks or storage facilities.**

- A. In addition to the information set forth in section 61.4, all owners or operators of underground tanks or storage facilities containing hazardous materials, in any quantity, shall provide to the Board of Health and the Fire Department, if applicable, the following additional information:
  - 1. The location of each tank or storage facility on the premises, complete with sketch map
  - 2. The age of each tank or storage facility, evidence of the date of installation, including any permits, if applicable.Such information shall be filed in the same manner, and at the same times, as that information required by section 61.4, above.
- B. All materials used in the construction of any underground tank or storage facility shall be suitable for the purpose, and such tank or storage facility shall be designed or constructed to withstand any normal stress to which it may be subjected. Where applicable, such tank or storage facility shall be constructed in accordance with Massachusetts General Laws chapter 148 and 527 CMR 9.00 et seq., as amended.
- C. Owners or operators of underground tanks or storage facilities for which evidence of an installation date is not available shall, at the order of the Board of Health, have such underground tanks or storage facilities tested, in accordance with section 61.6.D, herein. The tank or storage facility shall be emptied, to the extent feasible, prior to such testing. If the Board of Health determines that the tank or storage facility is not product-tight, it shall be repaired or disposed of under the direction of that authority in accordance with 527 CMR 9.00.
- D. All steel underground tanks or storage facilities with a capacity greater than 550 gallons shall be subject to mandatory testing 15 years after the date of installation, and annually thereafter, or if evidence of date of installation is not available, and the Board of Health so determines, in accordance

with the standards of National Fire Protection Pamphlet No. 329, Chapter 4-3.10, or other test of superior or equivalent accuracy. The tank or storage facility shall be emptied, to the extent feasible, prior to such testing. Owners or operators may demonstrate to the Board of Health, pursuant to section 61.9, herein that such tests are not appropriate when, after a showing to the Board of Health of monitoring devices, double-walled construction, or equivalent safety precautions, the Board of Health determines that the underground tank or storage facility does not represent a threat to ground or surface water quality. Such variance shall be required yearly. Nothing in this subsection shall be construed to replace or supersede the testing requirements of Massachusetts General Laws chapter 148 or any state regulation promulgated thereunder.

- E. The Board of Health recommends that all steel underground tanks or storage facilities with a capacity of less than 550 gallons be removed immediately after the termination of the manufacturer's warranty for the facility, or after 15 years of the date of installation of the facility, whichever last occurs.
- F. Where the Board of Health has probable cause to believe that the underground tank or storage facility has caused a leak or a discharge to occur, said Board may order the testing of such tank or storage facility within 3 workdays.
- G. If the testing required by this section indicates that a leak or discharge has occurred, the owner or operator shall proceed in accordance with section 61.7, herein.
- H. Underground tanks or storage facilities shall have appurtenances prominently labeled to provide notice as to the types of hazardous materials stored within.

#### **§ 61.7. Defects.**

- A. All leaking tanks or storage facilities must be reported to the Board of Health or the Fire Chief and emptied by the owner or operator within 12 hours, or as prescribed by state regulation, after detection of any leak.
- B. The Board of Health shall determine whether any tank or storage facility or its components that have been identified as the source of a leak shall be repaired, or removed and replaced, and shall notify the owner of its decision. In making its determination, the Board of Health shall be governed by the provisions of Massachusetts General Laws chapter 148 and 527 CMR 9.00.
- C. If the Board of Health determines that a tank or storage facility or its components shall be removed, any removal shall be completed within 90 days after that authority has notified the owner, in writing, of its decision.

#### **§ 61.8. Abandonment and other concerns.** [Amended 11-12-2002 STM Art. 16]

- A. The holder of any license issued pursuant to Massachusetts General Laws chapter 148 for underground storage of any liquid hazardous material shall notify the Board of Health and the Fire Chief whenever the provisions of said license cease to be exercised. Upon such notification, the Fire Chief shall prescribe appropriate action under Massachusetts General Laws chapter 148 and applicable state regulations.
- B. All other tanks or storage facilities, not regulated by Massachusetts General Laws chapter 148, shall be regulated as follows:
  - 1. The owner of tank or storage facility with an intent to abandon such tank or storage facility shall promptly notify the Board of Health and the Fire Chief of the decision to abandon. Except as provided in section 61.8.B.3, no tank or storage facility may be abandoned in place.

2. Abandoned tanks shall be emptied of all hazardous materials under the direction of the Board of Health. The product and tank shall be disposed of, at the owner's expense, as directed by that authority.
3. If the owner of a tank or storage facility, which is located under a building and which cannot be removed from the ground without first removing the building, decides, in conjunction with the Fire Chief under the provision of 527 CMR 9.00, to abandon said tank or storage facility, the owner shall promptly notify the Board of Health of this decision, and, subject to the directions of the Board of Health, have all the hazardous materials removed from the tank or storage facility and have same filled with a concrete slurry mix as set forth in 527 CMR 9.00, or as prescribed by the authority having jurisdiction.
4. If the Board of Health determines that a tank or storage facility or its components shall be removed, any removal shall be completed within 90 days after that authority has notified the owner, in writing, of its decision.

**§ 61.9. Variances.** [Amended 11-12-2002 STM Art. 16]

The Board of Health may vary the application of any provision of this bylaw, unless otherwise precluded by law, when in its opinion, the applicant has demonstrated that an equivalent degree of environmental protection required under this bylaw will still be achieved. The applicant at his/her own expense must notify all abutters by certified mail at least ten days before the hearing at which such variance request shall be considered. The notification shall state the variance sought and the reasons therefor. The Board of Health shall also notify, within 14 days of receipt of a variance request, the Fire Chief, Conservation Commission, and Building Inspector, of any variance requested under this Section, for their response in writing. The Board of Health shall hold a hearing on such variance request within 45 days of its receipt. Any variance granted by the Board of Health shall be in writing, as shall be any denial of a variance request, and shall contain a brief statement of the reasons for the granting or denying the variance.

**§ 61.10. Fees.**

- A. The Board of Health may charge reasonable fees and shall publish a fee schedule.
- B. The Board of Health may charge for additional expenses incurred in the enforcement of this chapter 61.
- C. Any person registering a tank or storage facility pursuant to this chapter 61 shall pay a fee to the Town's Board of Health. Such fee shall be due on the same date as the initial or annual registration. Failure to pay the fee shall constitute a violation subject to the penalties contained herein.

**§ 61.11. Enforcement.** [Amended 11-12-2002 STM Art. 16]

- A. All discharges of hazardous material within the Town are prohibited.
- B. Any person having knowledge of any discharge of hazardous materials shall immediately report the discharge to the Board of Health and the Fire Chief.
- C. The Board of Health or its agents may enter upon privately owned property consistent with the authority conferred upon the Board by Massachusetts General Laws for the purpose of performing their duties under this bylaw.
- D. Any person who violates any provision of this bylaw shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one violation exists, each violation shall constitute a separate offense. Upon the

request of the Board of Health or the Fire Chief, the Board of Selectmen shall take such legal action as is necessary to enforce this bylaw.

**§ 61.12. Severability.**

If any provision of this bylaw is held to be unconstitutional, or in violation of state law, it shall not affect any other provision or the administration thereof.